

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ROBERT A. BARTON

§

v.

§

CIVIL ACTION NO. 6:11-CV-9

COMMISSIONER, SOCIAL SECURITY
ADMINISTRATION

§

ORDER ADOPTING REPORT AND
RECOMMENDATION OF UNITED STATES
MAGISTRATE JUDGE

The Report and Recommendation of the Magistrate Judge, which contains her findings, conclusions, and recommendation for the disposition of this action, has been presented for consideration. The Report and Recommendation recommends that the decision of the Commissioner be affirmed and the complaint be dismissed. Plaintiff has filed written objections.

Having made a *de novo* review of the objections filed by Plaintiff, the Court finds that the findings, conclusions and recommendation of the Magistrate Judge are correct. Plaintiff's objections are a verbatim repetition of his original opening brief in this case. He does not appear to have amended or added to it in any way. The Magistrate Judge fully addressed the three issues raised in the original brief. Regarding the first issue, the Magistrate Judge found that Plaintiff's original counsel participated in every way during the administrative hearing before the Administrative Law Judge (ALJ), including raising an objection to the original administrative record and proffering additional records that the ALJ then incorporated, examining every witness and arguing the case to the ALJ. She further found that the ALJ fulfilled his duty to develop the record. Additionally, the Magistrate Judge observed that Plaintiff offered no authority for his argument that a heightened duty to further develop the record should have been imposed on the ALJ. Regarding the second issue, the Magistrate Judge found that the ALJ properly considered a combination of Plaintiff's

impairments, and made a credibility finding regarding his subjective testimony, which Plaintiff did not challenge. With regard to the third issue, the Magistrate Judge fully analyzed the Court's power to remand under 42 U.S.C. § 405(g) in the manner Plaintiff sought over his "new evidence" that had never been submitted to the ALJ or the Appeals Council in the first instance, and found that neither remanding under sentence four or sentence six of the statute was appropriate. Furthermore, she found that Plaintiff's request should be denied under the doctrine of laches.

In resubmitting the content of his original brief as his objections, Plaintiff has invoked this Court's *de novo* review, but has not addressed any of the Magistrate Judge's findings. Having conducted a *de novo* review, this Court finds the Report and Recommendation to be correct. Therefore, Plaintiff's objections are without merit and will be overruled. The findings and conclusions of the Magistrate Judge are therefore adopted as those of the Court.

In light of the foregoing, it is

ORDERED that Plaintiff's objections are hereby **OVERRULED**. It is further

ORDERED that the decision of the Commissioner is **AFFIRMED** and the complaint is hereby **DISMISSED WITH PREJUDICE**. It is further

ORDERED that any motion not previously ruled on is **DENIED**.

So ORDERED and SIGNED this 3rd day of May, 2012.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE